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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,605	04/02/2004	David Michael Whitlock	6924-66991	9816
24197	7590	09/25/2008		
KLARQUIST SPARKMAN, LLP			EXAMINER	
121 SW SALMON STREET			WOOD, WILLIAM H	
SUITE 1600				
PORLAND, OR 97204			ART UNIT	PAPER NUMBER
			2193	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/816,605	<b>Applicant(s)</b> WHITLOCK ET AL.
	<b>Examiner</b> William H. Wood	<b>Art Unit</b> 2193

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 June 2008.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-15 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-15 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 1-15 are pending and have been examined.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-15 are rejected under 35 U.S.C. 102(a) as being anticipated by **Logan** (US 6,601,018 B1).

#### **Claim 1**

**Logan** discloses in a system comprising a virtual machine manager process for

managing operation of virtual machines, a method of performing unit tests on a specified plurality of the virtual machines (*column 2, lines 6-10; column 34-37*), the method comprising:

receiving instructions to configure a network of virtual machines comprising the specified plurality of virtual machines (*column 4, lines 1-2*);

based on the instructions to configure the network of virtual machines, configuring the network by launching the specified plurality of virtual machines (*column 4, lines 1-2, 15-18, 24-27*);

executing a test program to invoke execution of selected units of code of a target program on the specified plurality of the virtual machines (*column 4, lines 55-67*); and

verifying that actual results of the execution of selected units of code matches expected results (*column 7, lines 3-9*).

*Claim 2*

**Logan** discloses the method of claim 1 wherein the network of virtual machines is configured by creating at least one host computer object and a plurality of virtual machine objects associated with the at least one host computer object (*figure 1*).

*Claim 3*

**Logan** discloses the method of claim 1 wherein the virtual machine manager invokes the execution of selected units of code of the target program by issuing remote

invocation method calls addressed to the specified plurality of virtual machines and specifying at least one unit of code of the targeted program to be executed by the specified plurality of virtual machines (*column 4, lines 43-44, 50-51*).

*Claim 4*

**Logan** discloses the method of claim 1 wherein the specified plurality of virtual machines are configured on a plurality of host computers (*figure 1*).

*Claim 5*

**Logan** discloses the method of claim 1 wherein the invocation of execution of selected units of code of the target program is asynchronous (*column 11, lines 30-33*).

*Claim 6*

**Logan** discloses the method of claim 1 further comprising, receiving an exception object indicative of an error in execution of at least one of the selected units of code of the targeted program (*column 8, lines 35-37*).

*Claim 7*

**Logan** discloses the method of claim 6 wherein the exception object further specifies at least one of the specified plurality of virtual machines on which the error in execution occurred (*column 7, lines 3-9 and column 11, lines 21-23*).

Claims 8-15

The limitations of claims 8-15 correspond to claims 1-7 and as such are rejected in a corresponding manner.

***Response to Arguments***

Applicant's arguments filed 12 June 2008 have been fully considered but they are not persuasive. Applicant argues **Logan** fails to disclose any capability for a test program to cause execution of code units of a target program in plural separate virtual machines (Arguments: page 6) and **Logan** fails to disclose an exception object identifying the virtual machine in which failure occurred (Arguments: page 7).

Clearly, **Logan** discloses "executing a test program to invoke execution of selected units of code of a target program on the specified plurality of the virtual machines" (column 4, lines 55-67; and column 2, lines 36-37, "multiple ... platform[s] for which a component is tested"). First, the ITE client makes use of multiple partitions for testing (this is further evidenced by the cited column 2). In short, **Logan**'s environment has a client that tests across multiple partitions or platforms or VMs. The environment is or provides the "test program" that makes this happen. Second, the cited prior art discloses testing across units across multiple virtual machines. The claim language "test program" is broad and could be the controlling aspect of **Logan**'s test environment.

Further, **Logan** discloses identifying the VM that failed (column 2, lines 36-37, "multiple ... platform[s] for which a component is tested"; and column 8, lines 35-37, "captures responses for interactive test cases, catches and deals with exceptions and

generates the test results transactions"). This includes the platform or VM that failed. Otherwise, such results would be useless.

The rejections are maintained as indicated.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Correspondence Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Wood whose telephone number is (571)272-3736. The examiner can normally be reached 10:00am - 4:00pm Tuesday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis A. Bullock Jr. can be reached on (571)272-3759. The fax phone numbers for the organization where this application or proceeding is assigned are (571)273-8300 for regular communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR systems, see <http://pair-direct.uspto.gov>. For questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.

/William H. Wood/  
William H. Wood  
Primary Examiner, Art Unit 2193  
September 25, 2008